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Comment on Recent Cases

ADMIRALTY: THE "JOHNSON AMENDMENT" TO THE SAVING CLAUSE.—Following the holding of the Supreme Court in Southern Pacific Company v. Jensen,[1] that a state workmen's compensation act is invalid when applied to give redress to a maritime tort, Congress passed the so-called Johnson Amendment to the Judicial Code saving "to claimants the rights and remedies under the workmen's compensation law of any state."[2] The effectiveness of this amendment has previously been questioned on two grounds: (1) that in a mere amendment to the saving clause, which was never heretofore construed as validating state laws contravening federal admiralty law, an intention to validate workmen's compensation acts which in fact contravened that law, might not be found, i. e., that the mere specific mention of workmen's compensation acts as "saved" would not broaden the scope of the saving

[1] (1917) 244 U. S. 205, 61 L. Ed. 1086, 37 Sup. Ct. Rep. 524, Ann. Cas. 1917E 900, L. R. A. 1918C 451.
[2] Judicial Code, § 24, cl. 3.

clause;[3] (2) that if state legislation in such cases falls under the ban of the Constitution, congressional acts are in no better position, because the Constitution is superior to both.[4] Nevertheless one district court has given the amendment effect; and another, taking a diametrically opposed view, has disregarded it so far as admiralty courts are concerned.

In *The Howell*[5] a libel in rem for injuries received by a stevedore while unloading a ship was dismissed on the ground that the Johnson Amendment operated as an adoption by Congress of the New York Workmen's Compensation Act, which abolished all liability except such as arose by virtue of that act, and therefore liability arising by the maritime law no longer existed, nor a remedy in rem against the ship. In *Rhode v. The Grant Smith Porter Company*[6] a libel in personam against the owner of a ship on account of personal injuries received by libellant was allowed, although the shipowner was insured under the Oregon Workmen's Compensation Act, which provided that the remedy therein given was in lieu of all other claims against the employer.

The soundness of these decisions necessitates an inquiry as to the true nature of our maritime law. The exclusiveness of the constitutional grant of admiralty jurisdiction to the federal courts was not discovered until the middle of the last century when states began to enact new, or actively enforce old, statutes creating a right in rem against merchant vessels.[7] Some of these later statutes were passed in the mistaken idea that the saving clause vested admiralty jurisdiction in state courts concurrent with that of the federal courts,[8] and others followed the hint given in The General Smith[9] that a federal court might enforce a lien created by state statute.[10]

Those statutes providing for proceedings in rem in state courts were declared invalid in the Supreme Court, and a critical examination of the saving clause followed.[11] It was declared that it was intended to be remedial only; to permit a right sanctioned by the maritime law to be enforced through any appropriate remedy recognized at common law, but not to permit the rights and liabilities of the parties to be measured by common law standards

[3] Austin T. Wright in 6 California Law Review, 69.

[4] 27 Yale Law Journal, 924.

[5] (Dist., S. Dist. N. Y., March 6, 1919) 257 Fed. 578.

[6] (Dist., Dist. Ore., June 23, 1919) 259 Fed. 304. The court said: "Where a party seeks redress for a maritime tort in an admiralty court, whether in rem or in personam, the rights, obligations, and liabilities of the respective parties must be measured by the maritime law as provided by Congress or the general principles thereof, and the right cannot be barred, enlarged or taken away by state legislation."

[7] Knapp, Stout & Co. v. McCaffrey (1900) 177 U. S. 638, 44 L. Ed. 921, 20 Sup. Ct. Rep. 824.

[8] Averill v. Steamer Hartford (1852) 2 Cal. 308; Taylor v. Steamer Columbia (1855) 5 Cal. 268.

[9] (1819) 4 Wheat. 438, 4 L. Ed. 609.

[10] Hughes, Admiralty p. 98.

[11] The Moses Taylor (1866) 4 Wall. 411, 18 L. Ed. 397; The Hine v. Trevor (1866) 4 Wall. 555, 18 L. Ed. 451; The Glide (1897) 167 U. S. 606, 42 L. Ed. 296. 17 Sup. Ct. Rep. 930.

rather than those of the maritime law;[12] that a common law remedy was saved, but not every remedy in a common law court;[13] thus a common law remedy was held to include a remedy in equity to enforce a possessory lien for towage;[14] and that for nearly every case in which a libel in rem may be filed in the federal court an action in personam could be prosecuted in the state courts;[15] but the remedy was saved to "suitors," not to any special court.[16] As a result of these cases it seems clear that the remedy which is saved must already be in existence, or in other words, no new remedy is created by the saving clause. This does not mean that its operation is limited to such causes of action as were known to the common law at the time of the passage of the Judiciary Act.[17] But on the other hand, it could not have been the intention of Congress to give the suitor all such remedies as the caprice of modern legislatures might devise, because then the jurisdiction vested in the federal courts by the Constitution would be defeated by the mere device of a state providing an exclusive statutory remedy for all cases.[18]

The determination of the true limits of the maritime law and admiralty jurisdiction rests ultimately in the Supreme Court, for it must decide the competency of federal courts to hear a matter of admiralty and maritime jurisdiction and the incompetency of state courts when that jurisdiction is exclusive of them. No state law or act of Congress can make this jurisdiction broader than the judicial power may declare it to be.[19] Since the Constitution vests in the federal courts jurisdiction in all cases of admiralty and maritime law, and since the Supreme Court has held that the remedy given by workmen's compensation acts works material prejudice to the characteristic features of the general maritime law, is it possible for Congress to adopt by a mere addition to the saving clause a state law which purports to abolish all other obligations, including those of the *lex maritima,* except only such as arise by its own statutory mandate? Congress is nowhere in the Constitution given power to legislate in matters concerning the principles of the general maritime law, although its power to do so has been several times affirmed by the Supreme Court.[20] The

[12] Chelentis v. Luckenbach S. S. Co. (1918) 247 U. S. 372, 62 L. Ed. 1171, 38 Sup. Ct. Rep. 501; Barrett v. Macomber Co. (1918) 253 Fed. 205.

[13] Schoonmaker v. Gilmore (1880) 102 U. S. 118, 26 L. Ed. 95.

[14] Knapp, Stout & Co. v. McCaffrey, supra, n. 7.

[15] Schoonmaker v. Gilmore, supra, n. 13.

[16] The Belfast (1868) 7 Wall. 624, 19 L. Ed. 266. The court said: "Observe the language of the saving clause under consideration. It is to suitors, and not to the state courts, nor to the circuit courts of the United States—examined carefully it is evident that Congress intended by that provision to allow a party to seek redress in the admiralty if he saw fit to do so, but not to make it compulsory in any case where the common law is competent to give a remedy."

[17] Steamboat Co. v. Chase (1872) 16 Wall. 522, 21 L. Ed. 369.

[18] The Moses Taylor, supra, n. 11.

[19] The Lottawanna (1874) 21 Wall. 558, 22 L. Ed. 654.

[20] The Lottawanna, supra, n. 19; In re. Garnett (1891) 141 U. S. 1, 35 L. Ed. 631, 11 Sup. Ct. Rep. 840; Southern Pacific Co. v. Jensen, supra, n. 1; Butler v. Boston Steamship Co. (1889) 130 U. S. 527, 556, 32 L. Ed. 1017, 9 Sup. Ct. Rep. 612.

power to change the maritime law must exist, otherwise we would be bound forever by immutable rules of ancient law. But whether this power resides in Congress or in the body which can change the Constitution is another question. Can the mere declaration of an intent to save rights and remedies of a certain specified sort be construed to authorize state legislatures to create, and state courts to enforce, a new remedy already held to work material prejudice to the characteristic features of the maritime law and unknown to it? If such a law by its very nature necessitates the trial of such suits in state tribunals only, there is certainly interference with the jurisdiction of the federal courts given them by the Constitution.

The Howell, if carried to its logical conclusion, wipes out immediately all remedies granted to sailors by Congress,[21] including those under the Seaman's Act,[22] together with his maritime right to care and cure and return.[23] This can hardly be said to be in accord with the policy of recent legislation, which has been to protect seamen's interests.

On the other hand the Rhode case raises new difficulties. Since the obligation arising under the workmen's compensation act is entirely distinct from that arising under the maritime law, if both remedies are available to an injured employee, the shipowner will be liable for double damages,[24] at least he will have paid his insurance premium for no consideration. Is this due process of law?

Probably the only solution of the difficulty is the enactment by Congress of a federal workmen's compensation act. This would require a redrafting of the present confused body of rules relating to seamen, legislation which is badly needed. But if uniformity is the essential requisite of our system of maritime law, Congress must go further, for uniformity can be obtained only by the adoption of a complete maritime code independent of the rules of the various states. Congress should make its enforcement exclusive in the federal courts, saving no common law remedies, and denying all jurisdiction to the state courts in matters of admiralty and maritime nature.

G. H.

BILLS AND NOTES: NEGOTIABILITY: "STATEMENT OF THE TRANSACTION WHICH GIVES RISE TO THE INSTRUMENT."—A bank gave a negotiable certificate of deposit for $5000, due in one year, to a church building committee, and with it as security the latter were able to borrow the cash from an insurance company. In return for the bank's obligation, the committee made out their promissory note to the bank's order, for the same amount and due

[21] U. S. Rev. Stats., §§ 4501-4613; Navigation Laws of the United States, pp. 59 et seq.

[22] Act of March 4, 1915, ch. 153, 37 U. S. Stats. at L. 1134.

[23] The Osceola (1903) 189 U. S. 158, 47 L. Ed. 760, 23 Sup. Ct. Rep. 483.

[24] State v. Daggett (1915) 87 Wash. 253, 151 Pac. 648, and note in 4 California Law Review, 234.